Court No.3

Writ Petition No. 852 (M/S)/ 2003

Vikram Singh Rana ……..Petitioner.

Vs.

Director Rehabilitation, Tehri Dam Project New Tehri

And others ……..Respondents.

Hon'ble Irshad Hussain, J.

This writ petition under Article 227 of the Constitution of India has been preferred against the impugned order dated 29-8-2003 passed by District Judge, Tehri Garhwal in Misc. Civil Appeal No. 8 of 2003 Vijay Singh Vs. Vikram Singh and others.

(2). Heard Sri V.B.S.Negi learned counsel for the petitioner and Sri K.N. Joshi learned counsel for the respondent No.2 A civil suit No. 25/ 2003 for relief of permanent injunction was filed by the petitioner in which the dispute was raised that the respondent No.2 has no legal right to raise any construction in plot No. 492 which is in his possession although the allotment proceeding is pending. It was also alleged that the said plot has not yet been allotted to respondent No.2 Vijay Singh. On the application for interim injunction the learned Civil Judge(Junior Division) heard the plaintiff-petitioner and directed issue of notice and fixed a date for disposal of application of temporary injunction paper No. 7-C. meanwhile the parties were directed to maintain status quo in regard to the plot No. 492.

(3). Aggrieved by this exparte order respondent No.2 preferred above mentioned miscellaneous civil appeal which was admitted and the learned District Judge fixed a date for the disposal of the matter and meanwhile also stayed the operation of the order which was passed by the learned Civil Judge (Junior Division) on 13.8. 2003 as stated above. Both the parties have shown hot haste in filing the miscellaneous civil appeal as well as the present writ petition although the learned Civil Judge(Junior Division) was ceased of the matter and could have decided the question as to whether the construction could be raised or not during the pendency of the suit. As the things stand neither of the party is allottee of the plot No. 492 and question of interim

injunction shall have to be decided on the basis of the fact as to which of the two party is in actual physical possession of this plot. Without taking into account this aspect the learned District Judge in the miscellaneous civil appeal stayed the operation of the order of the learned Civil Judge (Junior Division).

(4). Considering the dispute raised in the original suit and the present petition it will be just and proper to dispose of the writ petition with the direction that the District Judge. Tehri shall expeditiously decide the miscellaneous civil appeal preferably within a period of one month from the date of receipt of the copy of the order and meanwhile the parties may be directed to maintain status quo as is prevailing today.

(5). With the above direction and observation the writ petition is finally disposed of.

(Irshad Hussain, J.)

Dated: 27-9-2003

ISB